IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY FOURTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 3437 of 2005

Between:

C.N.M. High School Bestavaripet, Prakasam District,

Represented by its Correspondent, M. Kalanandasastrulu.

..... PETITIONER

AND

1. The Government of A.P., represented by its Secretary,

   School Education, Secretariat Buildings, Hyderabad.

2. The Director of School Education, Hyderabad.

3. The Regional Joint Director of School Education,

   Guntur, Guntur District.

4. The District Educational Officer, Ongole,

   Prakasam District.

.....RESPONDENS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ order or direction more one in the nature of writ of Mandamus declaring the Memo No.12080/COSE/A2/2004-4 dated 20-10-2004 issued by the first respondent directing the second respondent not to accord permission to fill up grant in aid posts which are not earlier specifically authorized as illegal, arbitrary and will not apply to the case of the petitioner's institution in view of the directions of this Court made in W.P.No.10570 of 2002 dated 18-07-2002 and consequential proceedings of the first respondent issued in the Memo No.19312/PS-1/2002-1 dated 18-10-2002 and consequently direct the respondents to take immediate steps

to fill up the aided vacancies existing in the petitioner's school by constituting a selection committee pursuant to the proposals forwarded by the fourth respondent to the third respondent vide proceedings in R.C.NO.865/B4/2002 dated 18-10-2004 pending disposal of the main writ petition.

Counsel for the Petitioner: MR.M.SUBBA REDDY

Counsel for the Respondents: GP FOR EDUCATION

This Court at the admission stage made the following :

O R D E R:

This writ petition is filed seeking to declare the Memo dated 20-10-2004 issued by the first respondent directing the second respondent not to accord permission to fill up grant in aid posts as arbitrary and illegal.

The petitioner - High School claims to be a recognised institution and all the teaching and non-teaching posts are aided posts. It is stated that six posts of Secondary Grade Assistants fell vacant and to fill up the said vacancies on 20-07-2001, the petitioner made a representation to the fourth respondent requesting to send proposals to the second respondent for ratification so as to constitute a selection committee to fill up the vacancies. Since the respondents failed to pass any orders, the petitioner filed W.P.No.10570 of 2002 which was disposed of by this Court by order dated 18-07-2002 directing the fourth respondent to forward the representation made by the petitioner to the third respondent within a period of two weeks. Even thereafter no further steps were taken by the respondents and therefore the petitioner High School was constrained to initiate the contempt proceedings. Ultimately, the respondents issued Memo dated 18-10-2002 considering the cases of the some of the institutions including the case of the petitioner-school. As per the said proceedings the first respondent has taken a policy decision to fill up

the vacant aided posts in private aided schools and issued orders vide G.O.Ms.No.75 (PS.2) Department dated 23-09-2002. In pursuance thereof, the Deputy Educational Officer vide proceedings in Rc.No.125/2004 dated 26-05-2004 again forwarded the proposals with regard to the case of the petitioner High School to the fourth respondent. Thereafter, the fourth respondent vide proceedings in Rc.No.865/B4/2002 dated 18-10-2004 sent the said proposals to the second respondent. While the matter stood thus, the impugned Memo dated 20-10-2004 was issued by the first respondent directing the second respondent that no new posts of grand in aid would be created and the existing vacancies would not be filled up except what has been specifically authorized since there is a general ban on recruitment except for the posts for which permission was specifically granted by the Government. Aggrieved by the same, this writ petition is filed contending *inter alia* that since the posts in the petitioner-school were fell vacant long back and the proceedings were already issued by the respondents as long back as in 2002 permitting to fill up the vacancies, the general ban imposed under Memo dated 20-10-2004 cannot be made applicable.

Heard the learned counsel for the petitioner-school and the learned Government Pleader appearing for the respondents.

The learned Government Pleader contends that in view of the general ban imposed under the Memo dated 20-10-2004, no new posts of grant in aid can be created and no existing vacancies can be filled up.

However, the learned counsel for the petitioner states that since the vacancies in question arose long back and the petitioner was permitted to fill up the vacancies vide proceedings of the first respondent vide G.O.Ms.No.75(PS.2) Department dated 23-09-2002, the Memo dated 20-10-2004 does not attract to the case on hand. In support of his contention, he placed reliance upon a decision of this Court in W.P.No.22188 of 2004, wherein this Court dealt with an identical issue and having considered the scope of the Memo dated

20-10-2004 held that in the Memo though it is stated that no new posts of grant in aid would be created and the existing vacancies would also not be filled up, in the very same Memo it is stated that the general ban is not applicable for the posts for which permission was specifically granted by the Government and accordingly permitted the petitioner therein to proceed with the selection process notwithstanding the ban imposed under the said Memo.

On a perusal of the said order, I am of the view that the ratio laid down in the said decision squarely applies to the case on hand since admittedly in the present case orders were passed long back granting permission to fill up the vacant posts.

The writ petition is accordingly disposed of with a direction to the respondents to take immediate steps to fill up the aided vacancies existing in the petitioner's institution by constituting a High Level Committee as per the recommendations of the fourth respondent forwarded to the 3rd respondent in Rc.No.865/B4/2002, dated 18-10-2004 notwithstanding the ban imposed under the Memo dated 20-10-2004. No costs.

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(**G. ROHINI, J**)

Date: 24-02-2005

Note:

CC in one week.

B/o

ghn

To

1. The Government of A.P., represented by its Secretary,
   School Education, Secretariat Buildings, Hyderabad.
2. The Director of School Education, Hyderabad.
3. The Regional Joint Director of School Education,
   Guntur, Guntur District.
4. The District Educational Officer, Ongole,
   Prakasam District.
5. Two CCs to the Government Pleader for School Education, High Court of A.P., Hyderabad. (O.U.T.)
6. One CC to Mr. M. Subba Reddy
7. Two CD copies.